

**In the United States District Court**

**of the State of Delaware ....**

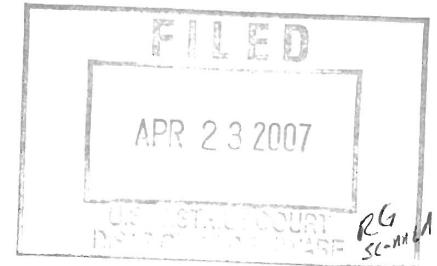
William Gregory Summers  
Movant...Below

0 7 - 2 1 7

v

Delaware Correctional Center

Defendant....Below



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Memorandum of Law in support of Motion for 2254

For a writ of Habeas Corpus

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**William Gregory Summers**

**Delaware Correctional Center**

**1181 Paddock Rd**

**Smyrna, De 19977**

## A...) **Jurisdictional Review....**

In order to demonstrate cause for a jurisdictional review, the movant notably raises that a jurisdictional defect cannot be procedurally defaulted, whereas this court with competent jurisdiction that derived its power solely from the legislative acts of congress. (see Insurance Corp of Ir. Ltd v Compagnie des Bauxites de Guinee... 456 U.S. 694..701\_ 1102 S.C.T... 2099 ...72 L.Ed 2d...492 (1982)\*. It is a well known fact that parties cannot confer jurisdiction upon the federal court... (See Love v Burlington... 733 F.2d 1562 1564 (11<sup>th</sup> cir 1984). It is an established principle of law that subject matter jurisdiction cannot be created or waived by any agreement. This honorable court not only has the power but also has the obligation at any time to inquire into jurisdiction whenever the possibility that jurisdiction does not exist. (Philbrook v Glodgett...421 U.S. 707...95 S.C.T...1893 ...44 L.Ed 525... (1975)...Citing (city of Kenosha v. Bruno 412 U.S 507... 93.S.ct... 2222...37 L.Ed 2d...109... (1973).

In short the movant raises that because of the jurisdictional claim may not be defaulted and the movant need not show cause to proceed before this honorable court. (See Kelly v United States...29... F.3d 1107... (7<sup>th</sup> cir 1994) also United States v Broodwell...959...F.2d 242.)

## B...) **AEDPA GENERALLY**

THE Antiterrorism and Effective Death Penalty Act (AEDPA). This amended 28...U.S.C. 2254... WAS signed into law on April 24, 1996.... Pub. L. No 104-132 Stat. 1214 (1996)... Because the petitioner filed his petition for federal habeas relief, subsequent to the effective date of the Act... The (AEDPA) is the applicable to the petition...(see) Lindh v Murphy. 521 U.S....320...336 (1997).

- 4) Allegation of a pattern of facts that is well within the mainstream of the constitutional litigation.

The second circuit made clear that these criteria are not a test *per se* but rather serve as indicators that the nature or presentation of the claim must have been on a federal nature... Daye ....696 F.2d at 192.

The movant raises this honorable court must use the Daye factor as a guideline to compare the claim of the petition with the issues addressed by the Delaware Supreme in its January 29, 2007, and February 15, 2007 order. The Delaware Supreme Court demonstrated that it was aware that movant appeal involved federal constitutional issues.

## **Argument**

The claim raised in the movant successive Writ of Habeas Corpus is a jurisdictional issue regarding whether or not the sentencing court had proper legal authority to depart from the sentencing guideline to impose an enhanced sentence of life imprisonment pursuant to the Habitual offender Statute ....Title... II..Del...c...4214(b). For the conviction of first degree robbery.

1. Whereas according to the Habitual offender Statute the state must demonstrate that a defendant has "Three (3) valid" felony conviction in the Superior Court of Delaware ...\*(see... Buckingham v State ....482. A.2d...327...(Del.. Supr..1984).
2. In this case the state failed to establish the Accuracy of one of the movant's prior conviction for delivery of cocaine in violation of Title....16.Del.C. 4751...(see... transcripts of sentencing on October 29, 1999... Appendix page 3 line 18-23).

Whereas the state misrepresented the date of the prior delivery conviction as December 3, 1999 and erroneously stated that the movant was 18 years old at the time of the sentencing on his prior conviction and that the actual crime happened when he was 17 years old. That state clearly admitted that the court thought the movant was an adult...(see ... transcript of sentencing hearing.... Page 3 line 18-23).

3. The movant shows that his date of birth is July 25, 1976. Which means that on December 3, 1999 he was 22 years old not 18. As the state sentencing judge wrongfully concluded.

4. Unmistakably the correct date of the movant's prior delivery conviction is December 3, 1993. The initial crime was committed early part of 1993. Prior to the movant's 16<sup>th</sup> birthday ....(see... Family Court case no JK89-0010... Regarding this case).
5. The movant's prior narcotic conviction was committed in 1993 not 1999. At which time he was 16 years old clearly under the jurisdiction of the Family court in the state of Delaware .
6. The movant request that this honorable court take a judicial notice that there is no record of proof (other then the state's mistaking belief of the court. As noted in Par 4 above) to indicate that the family court relinquished jurisdiction of movant's delivery charge in (case No# JK-9-0010) to the Superior court in (\* case no# 93k04951DI) (Crim..Action... No# PK9309214).
7. The movant raises the facts that before the family court can relinquished jurisdiction they were required to hold an Amenability Hearing pursuant to 10-Del-c-1010 as dictated by Hughes v State 653 A.2d 241 (Del ---Supr—1994 ) . To determine whether or not it is proper to treat movant as an adult offender and thereafter relinquish jurisdiction over to the Superior court (see State v Mayhill ...659. A2d 790 citing Marine v State ... 607 A.2d 1185... see also ... Holder v State ... 692 A.2d 882 (Del Sup 1997). Whereas before the court can relinquish this jurisdiction it must consider and make a record of the finding as to the following factor
  - A. The age and social back ground of the juvenile.
  - B. The nature of the alleged offense.
  - C. The extent and nature of the juvenile's prior delinquency record.
  - D. The juvenile present intellectual development and psychological maturity.
  - E. The nature of past treatment efforts .
  - F. The availability of programs designed to treat the juvenile's behavioral problems.

See United State v One Juvenile Male .... 40 F3d 841...(1994)...Citing... United State v Brian...N...900 F.2d 218...220 (10<sup>th</sup> cir 1990)( citing ...U.S.C. 18... 5032...) See also.... "Bilbo 19 F.3d at 915" (quoting United State v Doe 871 F.2d 1248...1255... 5<sup>th</sup> cir).

8. Furthermore the movant's narcotic convictions are not listed among the enumerated serious felony crimes under Title 10 Del C 1010 (A) ...1..and (3). That would invoke the Family court's - desire to declare the movant non-Amendable to the rehabilitative process available to the youth delinquency offenders...(see ... J.K. v State .... Del. Supr...383 A.2d..283).
9. The state reliance on this improper juvenile delinquency matter to seek on enhanced sentence under ...Del.C. 4214(B). Habitual offender statue which was used as a doargaining device in negotiation prior to trial. But movant rejected the state's unreasonable offer. Thus the prosecution and trial court use of movant's improper juvenile delinquent narcotic offense at the subsequent sentencing for imposition of an enhanced penalty as a habitual offender for robbery first degree, which undermined the 8<sup>th</sup> amendment "reliability." In the punishment phase \*(see... Mayes v State .... 64 A.2d 839... also U.S v Mannino...212 F3d...835.846-847...(3d. cir ...2000)\*. (Held that due process requires that information used for sentencing be true and reliable).\*

Whereas the "Mayes", court use the same standards in which a sentencing court can not rely on information that is demonstrably "False or Lack." A minimal indecorum of reliability ....(see... Mayes v State... 64 A.2d 839).

Whereas the special aggravating factor in this case , the prior juvenile delinquent narcotic offense was to be subjected to the Mandatory Jurisdictional Amenability process of title 10...Del.c.1010. The juvenile 6<sup>th</sup> and 14<sup>th</sup> amendment. Amend ability proceedings due process rights to rebut the need to have treatment as an adult at the subsequent reverse amenability proceeding pursuant to title...10...Del...c..1011...\*(see State v Hughes Del. Supr..653 A.2d 241..

According to Del ..c...1010 (b)...(2)thru(3). There "must" be an application for transfer of the jurisdiction filed by either the family court or the attorney general office ... (see ... Marine v State 624 A.2d ...1181... Del Supr..1993).

There is no documented proof in the record that any of these jurisdictional proceedings were held by either. The Family Court or the Superior Court. Thus the superior court cannot arbitrarily assume jurisdiction over this delinquency offense and then rely on it as an adult adjudication special aggravating factor to sentence to life imprisonment as a habitual offender. The amenability process was established to provide a minimum protection to a juvenile movant due process rights. The amenability process also eliminates the potential for such arbitrary or capricious charges as the decision here that resulted in unequal treatment ....(see ...Hughes v State Superior )\*. Such a judicial check on the charging authority is mandatory. Thus this merit proof that the superior court's jurisdiction and authority to convict and sentence movant as a habitual offender on the robbery conviction based upon this prior juvenile offense was impermissible because the lower court lacked jurisdiction.

As a matter of law the movant is entitled to the rule of Marine v State...607 A.2d 1185....505 U.S. 1247 113 S.CT 28... 120.L.Ed 2d 952...(1992).

This court must examine the entire records of both the family court. (File JK8-OO10) and the superior court (case #93k0495 D I). Relating to movant's "1993" juvenile narcotic offense. In order to determine whether or not the superior court retained proper subject matter.

Jurisdiction over the movant according to applicable governing Delaware law. Where governing Delaware law require the state to prove that the juvenile was found non- amenable to the process of the family court's jurisdiction before such prior crime can be used as a predicted requisite felony under 4214 (B) to sentence the movant as a habitual offender (see... Fletcher v State....Del Supr ... 409 A.2d 1254..)

Whereas the lower court lacked jurisdiction to impose a life sentence pursuant to title II..Del..c..4214..B . The petitioner submit that his sentence should be vacated by this court and be remanded back for resentencing .

## Standard of Review

Petitioner agrees that respondent's "Standard of Review" contains an accurate summary of the governing law regarding the deference due under the AEDPA to state court adjudications on the merits. On the hand respondent omits entirely from the discussion what maybe the most important standard of review to be considered at this juncture in the litigation the standard this court must apply in deciding whether or not to grant petitioner an evidentiary hearing on one or more of the habeas corpus claims.

A petitioner on federal habeas corpus is entitled to an evidentiary hearing where the petitioner established a "colorable" claim for relief and where the petitioner has never been afforded a state or federal hearing on his claim... Earp v Oronski ... 431 F.3d 1158-1167 (9<sup>th</sup> cir 2005)citing... Townsend v Sain..372 U.S. 293...(1963)... and Keeney v Tamaya -Reyes ...504 U.S. 1-5(1992). In stating a "colorable" claim, a petitioner is merely required to allege specific facts which if true, would entitle him to relief. I bid, granted under the AEDPA a federal court is not required to order a hearing where the petitioner failed to develop the facts in state courts. In such cases, the federal court accord a presumption of correctness to the facts found by the state court, and need not hold any evidentiary hearing. Unless those facts are rebutted by clear and convincing evidence. On the other hand no AEDPA deference is due where the state made an "unreasonable" determination of the facts and where a state court makes the evidentiary findings without holding a hearing and giving such finding clearly resulted in an "unreasonably determination" of the facts..." Taylor v Maddox ....366 F.3d...992..1001..(9<sup>th</sup> cir 2004).

In summary an evidentiary hearing is required under the AEDPA" and an appellate will remand for a hearing if the district court rules without granting one "Where the petitioner establishes a colorable claim and has never been accorded a state or federal hearing on his claim" (Earp, *supra*...at 1167).

Here petitioner requested an evidentiary hearing at every level of the state post conviction, and appealed. Each of the court to which applied, ruled without granting him an evidentiary hearing. As a result,(1) petitioner is entitled to an evidentiary hearing in this court before the court can make any credible determinations on the facts alleged in the petitions and supporting exhibits.

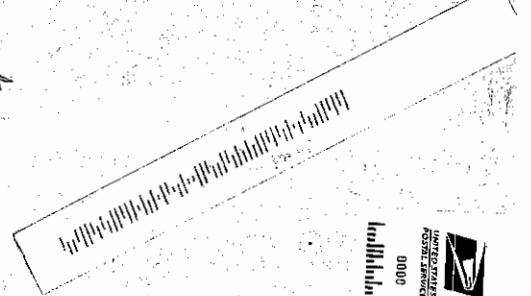
Any controverter "facts" found by the state court. While denying a request for an evidentiary hearing necessarily results from an "unreasonable determination" of the facts and hence is not entitled to any presumption of correctness... (see Earp. *Supra*.... at 1167 ....also Taylor....*Supra* 1101)

(Where the state courts' legal error infects the fact finding process, the resulting factual determination will be unreasonable and no presumption of correctness can attach to it.)

As the petitioner has set forth both sufficient legal claims. Namely the violation of the constitutional right in conjunction with the necessary factual support. The petitioner submits that he is entitled to an evidentiary hearing in this matter, in order that the record be more fully developed and to allow for the petitioner substantial justice.

William Henry Summers  
C/o Delaware Correctional Center  
119 Paddock Rd  
Smyrna DE 19977

U.S. District Court  
of State of Delaware  
500 ~~West~~ King Street  
Wilmington, DE 19801  
844 May St.



1  
2 IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
3  
4

IN AND FOR KENT COUNTY

5 STATE OF DELAWARE ) I.D. NO. 9704012286  
6 vs. )  
7 WILLIAM G. SUMMERS ) Sentencing

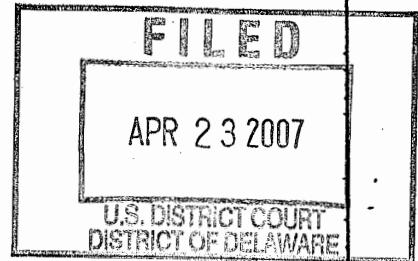
8  
9 BEFORE: HONORABLE HENRY duPONT RIDGELY, PRESIDENT JUDGE

10 \* \* \* \* \*

11 07-217

12 APPEARANCES:

13 JOHN R. GAREY, ESQUIRE  
14 Deputy Attorney General  
15 on behalf of the State of Delaware  
16  
17 RICHARD M. BAUMEISTER, ESQUIRE  
18 Attorney for Defendant



18 \* \* \* \* \*

19 TRANSCRIPT OF SENTENCING

20 October 29, 1999

21 \* \* \* \* \*

22 DEBBIE WALKER BURRELL  
23 Official Court Reporter

24  
25 ORIGINAL

1  
2        INDEX TO TESTIMONY  
3

4        DISCUSSION AMONG THE PARTIES  
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3-8

1 P R O C E E D I N G S  
2

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3 MR. GAREY: At this time the State moves the  
4 sentencing of Gregory Summers.  
5

6 THE COURT: Mr. Baumeister?  
7

8 MR. BAUMEISTER: The State has filed a motion  
9 to have Mr. Summers declared an habitual offender, or under  
10 4214(b) Title 11, and it is the opinion of the defense  
11 that he is not eligible for that treatment because one of  
12 the prior convictions which he was convicted, he has two  
13 prior convictions, one for a delivery where he was treated  
14 as an adult but he was a juvenile, 16 at the time of the  
15 offense. And the other charge is an attempt to traffic.  
16

17 It is not a trafficking charge, so it is the  
18 defense's position that he is not eligible.  
19

20 THE COURT: Mr. Bailiff, come to side bar.  
21

22 (Whereupon, an off record discussion was held.)  
23

24 THE COURT: What is the State's position on that?  
25 Hand me the file, please.  
26

27 MR. GAREY: Your Honor, the State's position is  
28 that the defendant was sentenced in this Court in  
29 December the 3, 1999 by Your Honor for delivery of cocaine.  
30 At that time he was 18, even though the offense was  
31 committed when he was 17. In any event, he was thought as  
32 an adult by the Court and it's our position as well as  
33 based upon the prior cases that a conviction in this Court  
34  
35

36 ..

## IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR Kent COUNTY

STATE OF DELAWARE

V.

CR. A. NO. \_\_\_\_\_

Gregory Summers

The defendant must answer the following questions in his or her own handwriting.

Date of Birth 7-25-76 Last grade in school completed 10Have you ever been a patient in a mental hospital? noAre you under the influence of alcohol or drugs at this time? noHave you freely and voluntarily decided to plead guilty to the charges listed in your written plea agreement? yesHave you been promised anything that is not stated in your written plea agreement? noHas your attorney, the State or anyone threatened or forced you to enter this plea? no

Do you understand that because you are pleading guilty you will not have a trial and you therefore waive (give up) your constitutional right:

- (1) to be presumed innocent until the State can prove each and every part of the charge(s) against you beyond reasonable doubt;
- (2) to a speedy and public trial;
- (3) to trial by jury;
- (4) to hear and question the witnesses against you;
- (5) to present evidence in your defense;
- (6) to testify or not testify yourself; and,
- (7) to appeal to a higher court?

yes  
(Yes or No)

OFFENSE	STATUTORY PENALTY	TIS GUIDELINE
1. <u>Del / Coc.</u>	<u>0 - 10 years</u>	<u>0 - 30 mos.</u>
2. _____	<u>1.5</u>	<u>2.5</u>
3. _____	_____	_____

TOTAL CONSECUTIVE MAXIMUM PENALTY: 10 yearsDo you understand that, if incarcerated, you will not be eligible for parole and the amount of early release credits which you may earn will be limited to a maximum of ninety (90) days per year? n/aIs there a mandatory minimum penalty? no If so, what is it? \_\_\_\_\_Has anyone promised you what your sentence will be? noAre you on probation or parole? no (A guilty plea may constitute a violation.)Do you understand that a guilty plea to a felony will cause you to lose your right to vote, to be a juror, to hold public office, to own or possess a deadly weapon and other civil rights? yesAre you satisfied with your lawyer's representation of you and that your lawyer has fully advised you of your rights and the result of your guilty plea? yesSandra Dean 10-7-93

Defense Counsel

Date

Defendant

xc: Superior Court, Attorney General, Attorney for Defendant, Defendant

(1 - 1 - 1 - 1)

Revised March, 1

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE,

v.

Gregory Summers,  
Defendant.

CrA No.

JK 93-09-0214  
Through 0217

PLEA AGREEMENT

Defendant will plead guilty to:

Delivery of Cocaine (0214)

State will enter a Nolle Prosequi on:

Rem. Cts.

State will recommend:

45 days C-5 4204K

Followed by probation

Subst. abuse evaluation.

Pursuant to Rule 11

Other agreement:

\$20 restitution to Dover Police Dept

Drug unit.

Sandra Dean

ATTORNEY FOR DEFENDANT

DATE: 10/7/93

James W. Harkler

Deputy Attorney General

cc: Superior Court  
Attorney General  
Attorney for Defendant  
Defendant

Gregory Summers

Defendant

03/30/1994

CAPIAS WITHDRAWN

VOP HRG HELD. FOUND IN VOP AND  
SENTENCED. (033094) TBH

04/04/1994

VOP ENTERED FROM SENTENCE CALENDAR  
THIS 30TH DAY OF MARCH, 1994, IT  
IS THE ORDER OF THE COURT:

1. THE DEF IS ADJUDGED GUILTY OF  
VOP SENT ORDERED IN THE ABOVE  
STATED ACTION. PROBATION IS REV  
AND SENT REIMPOSED AS FOLLOWS.

2. THE DEF SHALL PAY COSTS, FINE,  
SURCHARGE AND RESTITUTION AS  
PREVIOUSLY ORDERED.

3. EFF MARCH 30, 1994, THE DEF IS  
PLACED IN THE CUSTODY OF THE DOC  
AT L5 FOR A PERIOD OF 3 YRS. THE  
DEF SHALL RECEIVE CREDIT FOR ANY  
TIME PREVIOUSLY SERVED ON THIS  
CHARGE. THE DEF SHALL REMAIN IN  
A JUVENILE DETENTION FACILITY  
UNTIL HIS 18TH BIRTHDAY (7/25/94)  
AS OF 7/25/94 THE DEF SHALL BE  
TRANSFERRED TO THE DELAWARE  
CORRECTIONAL CENTER FOR A PERIOD  
OF 6 MONTHS FOLLOWED BY 18 MONTHS  
AT L3.

THE FOLLOWING SPECIAL CONDITIONS  
OF SUPERVISION SHALL APPLY TO ALL  
TERMS OF PROBATION ORDERED:

1. ALL TERMS AND CONDITIONS OF  
THE 12/3/93 SENTENCE ARE  
REMIPOSED.

(040794) TBH

05/05/1995

PROGRESS REPORT

DISCHARGE: UNIMPROVED DUE TO  
INCARCERATION AND NEW CONVICTION.  
OTHER: MONIES OWED ARE TRANSFERED  
TO AND COLLECTABLE UNDER  
K94040415.

APPROVED. 6/1/95 TBH

EFFECTIVE JULY 11, 1993 THE DEFENDANT IS PLACED IN THE CUSTODY OF THE DEPARTMENT OF CORRECTION AT SUPERVISION LEVEL 5 FOR A PERIOD OF 3 YEARS .

THIS SENTENCE IS SUSPENDED FOR TIME SERVED TO BE FOLLOWED BY SUPERVISION LEVEL IV (HOME CONFINEMENT) UNTIL THE DEFENDANTS 18TH BIRTHDAY FOLLOWED BY 2 YEARS AT SUPERVISION LEVEL III. THE PERIOD OF PROBATION SHALL BE SUPERVISED BY THE ADULT DIVISION OF COMMUNITY SERVICES PURSUANT TO RULE 11 PLEA AGREEMENT RESTITUTION IS ORDERED AS FOLLOWS

\$ 0.00	DOVER POLICE DEPARTM
\$ 0.00	400 S.QUEEN STREET
\$ 20.00	DOVER DE 19901

AS TO ALL CHARGES THE FOLLOWING SPECIAL CONDITIONS OF SUPERVISION SHALL APPLY: THE DEFENDANT SHALL: PAY THE RESTITUTION, FINES, SURCHARGES AND COSTS ORDERED DURING THE PROBATIONARY PERIOD. SHOULD THE DEFENDANT BE UNABLE TO COMPLETE HIS FINANCIAL OBLIGATIONS DURING THE PERIOD OF PROBATION ORDERED, HE MAY ENTER THE WORK REFERRAL PROGRAM TO SATISFY SAID OBLIGATIONS UPON DETERMINATION BY THE PROBATION OFFICER.

SHALL PERFORM 0-35 HOURS OF COMMUNITY SERVICE THE EXACT HOURS EACH WEEK SHALL BE AT THE DISCRETION OF THE P.O.

THE DEFENDANT SHALL BE EVALUATED FOR SUBSTANCE ABUSE AND FOLLOW ANY DIRECTIONS FOR COUNSELING, TESTING OR TREATMENT MADE BY THE P.O.

LML 1-10-94

D/DEAN SANDRA W

S/APOSTOLICO JAMES V

CR/

CC/

12/08/1993

ORDER OF JUDGMENT

12/13/1993

NOLLE PROSEQUI

IK93090216 IK93090217 IK93090215

K93090218, K93090219, IK93100012

RIDGELY HENRY DUPONT

LML

02/25/1994

CAPIAS ISSUED FOR VIOLATION OF PROBATION FORTHWITH 2/25/94 CAB

RIDGELY HENRY DUPONT

SUPERIOR COURT CRIMINAL DOCKET  
( as of 04/13/1999 )

Page 1

e of Delaware v. GREGORY W SUMMERS  
e's Atty: JAMES V APOSTOLICO , Esq.  
ENSE ATTY: SANDRA W DEAN , Esq.AKA: GREG SUMMERS  
GREG SUMMERS

DOB 07/25/1976

igned Judge:

ages:	DUC#	Crim.Action#	Description	Dispo.	Dispo. Date
1	93K04951DI	PK93090214	DEL N SCH I/II	PG	10/07/1993
2	93K04951DI	IK93090215	CONSP 2ND	NOLP	10/07/1993
3	93K04951DI	IK93090216	DEL N SCH I/II	NOLP	10/07/1993
4	93K04951DI	IK93090217	DEL N SCH I/II	NOLP	10/07/1993
5	93K04951DI	K93090218	CRIM IMPERSON	NOLP	10/07/1993
6	93K04951DI	K93090219	DISORD CONDUCT	NOLP	10/07/1993
7	93K04951DI	IK93100012	DEL N SCH I/II	NOLP	10/07/1993

Event	Date	Event	Judge
BAIL BOND AND COMMITMENT	09/15/1993	16000.00 100 SECURED BOND TOT.	WALLS WILLIAM J., JR.
TRUE BILL	10/04/1993		
BAIL BOND AND COMMITMENT	10/07/1993	78 01000.00 100 SEC BOND TOT	STEELE MYRON T.
ARRAIGNMENT - ENTERED GUILTY PLEA TO 0214, DEL OF COCAINE AND PSI ORDERED. REMAINING COUNTS TO BE NOL PRO AT SENTENCING. TBH	10/07/1993		
ARRAIGNMT. WAIVED READING, TBJ PLEA N GLTY BOND SET ON 0214. TBH	10/07/1993		STEELE MYRON T.
SENTENCING CALENDAR	12/03/1993	SENTENCED AND COMMITTED TBH	RIDGELY HENRY DUPONT
AS TO IP93090214 , THE DEFENDANT IS ADJUDGED GUILTY OF THE OFFENSE CHARGED. THE DEFENDANT IS TO PAY COSTS OF PROSECUTION. THE DEFENDANT IS TO PAY A FINE IN THE AMOUNT OF \$ 5000.00 PLUS AN 18% SURCHARGE FOR THE 'VICTIM COMPENSATION FUND' AND A 15% SURCHARGE FOR THE DRUG REHABILITATION, TREATMENT, AND EDUCATION FUND . \$ 4500.00 OF THE FINE IS SUSPENDED.			RIDGELY HENRY DUPONT

CERTIFIED  
AS A TRUE COPY 4-13-99  
ATTEST: JOE A. KLENOSKI, PROTHONOTARY  
BY: Attn: Clerk

1  
2 CERTIFICATE OF REPORTER  
3

4 I, Debbie Walker Burrell, CSR, RPR, and Official  
5 Court Reporter of the Superior Court, State of Delaware,  
6 do hereby certify that the foregoing is an accurate  
7 transcript of the testimony adduced and proceedings had,  
8 as reported by me, in the Superior Court of the State of  
9 Delaware, in and for Kent County, in the case therein  
10 stated, as the same remains of record in the Office of the  
11 Prothonotary of Kent County, at Dover, Delaware.

12 WITNESS my hand this 4th day of  
13 January, A.D. 2000.

14  
15 Debbie Walker Burrell  
16

17 Debbie Walker Burrell  
18 Official Court Reporter  
19  
20  
21  
22  
23  
24  
25

1 THE COURT: Just a moment, Mr. Summers.  
2

3 Mr. Baumeister, do you have any further comment?  
4

5 MR. BAUMEISTER: No, Your Honor.  
6

7 THE COURT: Does the State have any further  
8 comment?  
9

10 MR. GAREY: No, Your Honor.  
11

12 THE COURT: Again, as previously stated, the  
13 Court has no discretion but to impose a life sentence on  
14 the K-97-10-0448. That sentence is imposed with credit  
15 for time previously served.  
16

17 As to K-97-10-0451, the defendant is adjudicated  
18 guilty of the offense charged. He shall pay the costs of  
19 prosecution. They are suspended. He is placed in the  
20 custody of the Department of Corrections at supervision of  
21 level 5 for 1 year and that is suspended. As to  
22 K-97-10-0454, the defendant is adjudicated guilty of the  
23 offense charged. He shall pay the costs of prosecution.  
24 That is suspended. He is placed in the custody of the  
25 Department of Corrections, supervision of level 5 for  
1 year. That is suspended for probation consecutive to  
0448. Each one year period of probation to be at level 3.

Mr. Summers, you have the right of appeal and  
the Supreme Court will review your claims.

THE DEFENDANT: So at this time, this present  
time I got life plus nothing.

(Whereupon, the proceedings adjourned.)

24 \* \* \* \*  
25

1  
2 and acknowledging, and hearing the acknowledgement of  
3 defendant's prior record, that the defendant is declared  
4 to be an habitual criminal under the laws of the State of  
5 Delaware and it is ordered consistent with 11 Delaware Code,  
6 Section 4214(b), that William J. Summers, also known as  
7 Gregory W. Summers, shall be imprisoned for a life sentence.

8 I have signed the order to that effect, having no  
9 discretion to do otherwise. That is all. You are committed  
10 to the custody of the Department of Corrections.

11 THE DEFENDANT: I can't speak to my own defense,  
12 Your Honor?

13 THE COURT: All right. Bring him back.  
14 Mr. Summers, anything you would like to say?

15 THE DEFENDANT: A lot. I have a lot to say,  
16 Your Honor. I am saying first, I'd like to say that I  
17 respect what you said, what you just done. You know what  
18 I'm saying. That's your job, but I feel that at the time  
19 of this whole situation was going on I haven't been  
20 represented fairly. I really do feel that because for  
21 one, you as a judge I took and put my faith in you to judge  
22 and adjudicate my trial. You allowed burglar's testimony  
23 to convict me, testimony by my attorney to go on by. Ain't  
24 much more I can say.

25 I have been violated speedy trial rights. All of  
my rights have been violated. Ain't no more I can say.

convictions acknowledged? I understand the legal argument.

MR. BAUMEISTER: Yes, Your Honor, for appeal purposes or for the record for paper purposes, but as far as I know the convictions are there and the defense is challenging the convictions for the statutory obligations.

THE COURT: I have considered carefully the arguments which have been presented and the State's motion for the defendant to be declared an habitual criminal.

Under the provisions of 11 Delaware Code, Section 4214(b), it is not disputed -- well, Mr. Garey has disputed that he was 16 at the time of the offense.

MR. GAREY: No, Your Honor. That's not disputed.

THE COURT: The age of the defendant at the times of his conviction are not disputed here, one of them being at the age of 16, nor is it disputed that the defendant was prosecuted and convicted in the Superior Court as an adult, that conviction being a Felony I within Section 4214(b).

A clear reading of the statute requires that upon prior conviction of certain felonies, the Court has no discretion but to impose a mandatory life sentence. The defendant has, in fact, been convicted as the prerequisite provided in that statute, and therefore the Court, again, has no discretion.

It is therefore, after taking judicial notice

24

25

1 person who has been two times convicted of a felony of an  
2 attempt to commit a felony, hereunder specifically named  
3 under the laws of this state and/or any state in the  
4 United States or any territory of the United States, and  
5 who shall thereafter be convicted of a subsequent felony  
6 herein specifically named or an attempt to commit such  
7 felony is declared to be an habitual criminal. And the  
8 Court in which such third or subsequent conviction is that  
9 is imposing sentence shall impose a life sentence upon the  
10 person convicted, unless the subsequent conviction requires  
11 or allows and results in the imposition of capital  
punishment."

14 THE DEFENDANT: I acknowledge them but I wasn't  
15 at the age of 18 when that, when I delivered the cocaine at  
16 one time. I was 16 at the time and I was a juvenile. I  
17 was not 18, so at that time when I was 16, I did not have  
18 knowledge of the court situation that I was dealing with  
and I was ignorant to the law at that time.

19 THE COURT: Are certified copies of the convictions  
20 of record?

21 MR. GAREY: I think they are filed in the Court,  
22 Your Honor.

23 THE COURT: All right. Mr. Baumeister, are the

counts as an adult conviction and does apply to 4214.

The most recent case I can think of is

Larrice Asberry, wherein Your Honor declared the defendant an habitual offender, under 4214(a) pursuant to the State's motion, I think the motion speaks for itself. The requisite offenses have been delineated for the Court and they comply with the case of Gray vs. State which says that they have to be conviction, sentencing, conviction, sentencing which Your Honor can see clearly the delivery of cocaine sentencing was on December 3, 1999, attempted trafficking in March 17, 1995 by Judge Terry, and then this sentencing today for robbery in the first degree.

THE COURT: All right. And your position as to the argument that the trafficking, attempted trafficking in cocaine does not qualify because it was an attempt?

MR. GAREY: I think it's specified in the statute that in a conviction or an attempt, a conviction for the crime or an attempted conviction for the crime qualifies.

THE COURT: Mr. Baumeister?

MR. BAUMEISTER: Your Honor, I don't have the statute in front of me on that point. I'm not sure what the statute says on the word attempt, but the crimes that trigger the habitual offender statute are very clearly delineated. It does say trafficking is one of the problems.

THE COURT: 4214(b) reads as follows: Any

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1181 Padlock Rd  
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U.S. District Court  
of State of N.J.  
~~500 North King Street~~  
Wilmington, Del. 19801

M.S.  
RAY